

**RECEIVED  
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DEC 10 2008

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant : Koji SATO, et al.  
Application No. 08/750,641  
Filing Date : 16 December 1996  
Title : SCHEDULE SETTING AND PROCESSING SYSTEM  
Art Unit : Office of Petitions  
Examiner : L. Walsh

**Mail Stop Petition  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450**

**DECLARATION OF  
JOHN C. ALTMILLER**

I, the undersigned, John C. Altmiller, make this declaration in support of the Renewed Petition for Revival of an Application for Patent Abandoned Unintentionally Under 37 CFR § 1.137(b) for the above identified application.

1. Since about August 2007, I have been retired from the active practice of patent law. My current home address is 1908 Ballycor Drive, Vienna, VA 22182.

2. From about 1986 to July 31, 2007, I served as a partner of Kenyon & Kenyon LLC ("Kenyon") in Kenyon's Washington, DC offices. Prior to that time, I worked in Kenyon's New York office.

3. During my employment and tenure as a partner at Kenyon, I had numerous responsibilities, including prosecuting patent applications for Toyota Jidosha Kabushiki Kaisha ("Toyota"), the assignee of U.S. Patent Application Serial No. 08/750,641 ("641").

4. To my recollection, from at least 1995 to about July 2007, I was docketed as a supervising attorney/partner for many patent applications for Toyota. During this time I supervised several associates who assisted me with Toyota prosecution matters, including, Sterlon Mason, Mark H. Neblett, and William E. Curry.

5. It is my understanding that a Continuing Prosecution Application ("CPA") for '641 was filed with the USPTO on March 15, 2000.

6. It is my understanding that a Preliminary Amendment for '641 was filed with the USPTO on March 29, 2000.

7. It is my understanding that a Notice of Allowance and an Issue Fee Transmittal form for '641 was mailed to a prior address of Kenyon's Washington, DC office on April 17, 2000.

8. It is my understanding that an "Issue Fee Transmittal" form is present in the USPTO's file wrapper for '641 and that this form remains blank (uncompleted). The form is stamped "MATCH & RETURN" and further stamped "RECEIVED APR 27 2000 TC 3600 MAIL ROOM."

9. Based on the above information, as well as my recollection regarding the prosecution of Toyota cases, it is my conclusion that the Notice of Allowance for '641 was not received by Kenyon & Kenyon, but rather, was returned to the USPTO as undeliverable.

10. I did not know of the Notice of Allowance for '641 until contacted in 2008 by Shawn O'Dowd, who is currently a partner at Kenyon.

11. It is my understanding that a Notice of Abandonment was mailed to a prior address of Kenyon's Washington, DC office on September 13, 2000.

12. Based on the above information, as well as my recollection regarding the prosecution of Toyota cases, it is my conclusion that the Notice of Abandonment for '641 was not received by Kenyon & Kenyon.

13. I did not know of the Notice of Abandonment for '641 until contacted in 2008 by Shawn W. O'Dowd.

14. According to a document in Kenyon's paper files, I signed a change of correspondence address form for '641 on October 2, 2000, and that this form was stamped as received by the USPTO on October 3, 2000. I have no specific recollection relating to the signing or filing of this document. This document is attached as Exhibit 1 to this declaration.

15. Based on the above information, as well as my recollection regarding the prosecution of Toyota cases, it is my conclusion that the form was prepared for my signature by Cathy Ryan, a patent secretary at Kenyon who was then tasked with the responsibility of changing addresses for many of the cases then prosecuted by Kenyon. I have no specific recollection relating to this form.

16. According to documents in Kenyon's paper files, two other Kenyon attorneys filed documents with the USPTO relating to the correspondence address and power of attorney for the '641 application. These documents, as well as a communication relating to the filing of the documents, are attached as Exhibit 2 to this declaration. I have no specific recollection relating to these documents or the communication.

17. It is my understanding that the USPTO's paper file for '641 was officially "reported lost in USPTO" on November 27, 2000 ("11/27<sup>th</sup> [sic]"). Memoranda from Cathy Ryan, dated "1/12/00 [sic]" documenting this November 27<sup>th</sup> date is attached as Exhibit 3 to this declaration.

18. It is my understanding that I signed a "POWER TO INSPECT AND MAKE COPIES" of the '641 file on February 7, 2001. I have no specific recollection relating to the signing or filing of this document. This document is attached as Exhibit 4 to this declaration.

19. It is my understanding that Mark H. Neblett filed a File Reconstruction request which was stamped as received by "Licensing & Review" on March 23, 2001. This document is attached as Exhibit 5 to this declaration.

20. Based on the above information, as well as my recollection regarding the prosecution of Toyota cases, it is my conclusion that the USPTO informed us that the file for '641 had been lost, that we filed a request for reconstruction of the '641 file, and then awaited a USPTO response.

21. It is my understanding that an electronic docket entry entitled "PTO lost file-awaiting OA" was entered into Kenyon's electronic docketing system on July 15, 2002." Evidence of the docket entry is attached as Exhibit 6 to this declaration.

22. It is my understanding that I signed a document entitled "STATUS INQUIRY" on September 8, 2003. I have no specific recollection relating to the signing or filing of this document. The document "respectfully request[s] that the Examiner inform Applicants of the status of ['641]." The paper further indicates that "The U.S. Patent and Trademark Office notified Applicants that the subject file had been lost and, accordingly, Applicants filed a copy of the relevant documents forming the file history in a File Reconstruction on March 23, 2001." The paper also authorized the Commissioner to "charge any fee relevant to this filing to Kenyon & Kenyon Deposit Account No. 11-0600." The paper has Kenyon & Kenyon's 1500 K Street, N.W. address at the bottom of the page. This document is attached as Exhibit 7 to this declaration.

23. Based on the above information, as well as my recollection regarding the prosecution of Toyota cases, it is my conclusion that a review of my pending cases, which revealed the "PTO lost file" entry, prompted the filing of the Status Inquiry of September 8, 2003.

24. During my employment at Kenyon, neither the USPTO nor anyone at Kenyon advised me that '641 had been abandoned.

25. During my employment at Kenyon, neither the client nor anyone at Kenyon requested me to allow '641 to become abandoned.

26. After leaving my employment at Kenyon, I have not been involved in prosecution of, or been provided information regarding '641, until being recently advised of the present Petition.

I declare that all of the above statements made based on my own knowledge are true and that all of the above statements that were made on information and belief are believed to be true, and further declare that these statements are made with the knowledge that knowing, willful and materially false statements, as are defined under Section 1001 of Title 18 of the United States Code, are punishable by fine, imprisonment, or both under Section 1001, and that such statements may affect the validity of the any patent issuing from '641 if the application is revived.

Dated: 9 December 2008

  
John C. Altmiller

## EXHIBIT 1 TO ALTMILLER DECLARATION

Please type a plus sign (+) inside this box → ☐

Approved for use through 8/31/08, OMB 0331-0035  
Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no person is required to respond to a collection of information unless it displays a valid OMB control number.

<b>CHANGE OF CORRESPONDENCE ADDRESS Application</b>  Address to: Assistant Commissioner for Patents Washington, D.C. 20231	Application Number	08/750,641
	Filing Date	12/16/96
	First Named Inventor	Sato
	Group Art Unit	2316
	Examiner Name	
	Attorney Docket Number	77792/23

Yoyote / Yoshida

Please change the Correspondence Address for the above-identified application to:

☒ Customer Number 23838  
Type Customer Number here



OR

<input type="checkbox"/> Firm or Individual Name			
Address			
Address			
City	State	ZIP	
Country			
Telephone	Fax		

This form cannot be used to change the data associated with a Customer Number. To change the data associated with an existing Customer Number use "Request for Customer Number Data Change" (PTO/SB/124).

I am the:

- ☐ Applicant
- ☐ Assignee of record of the entire interest.  
Certificate under 37 CFR 3.73(b) is enclosed.
- ☒ Attorney or agent of record.

Typed or Printed Name	John C. Alt Miller
Signature	John C. Alt Miller
Date	10/2/00

Survey your statement: This form is estimated to take 0.2 hours to complete. Time will vary depending upon the needs of the individual claim. Any comments on the amount of time you are required to complete this form should be sent to the Chief Information Officer, Patent and Trademark Office, Washington, DC 20231. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Assistant Commissioner for Patents, Washington, DC 20231.

DEC 10 2008

**EXHIBIT 2 TO ALTMILLER DECLARATION**PATENT  
Docket No. 77792/23**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

APPLICANTS : Koji SATO, et al.  
SERIAL NO. : 08/750,641  
FILED : December 16, 1996  
FOR : SCHEDULE SETTING AND PROCESSING SYSTEM  
GROUP ART UNIT : 2316  
EXAMINER : O. Hernandez

Assistant Commissioner for Patents  
Washington D.C. 20231

**CHANGE OF CORRESPONDENCE ADDRESS**

S I R:

Notice is hereby given that the correspondence address in the above-identified application has changed. Please address all future communications regarding this application to:

John C. Altmiller  
KENYON & KENYON  
1500 K Street, N.W.  
Washington, D.C. 20006

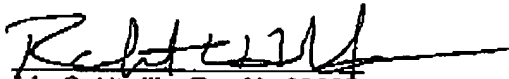
This address change is effective immediately. Thank you.

Respectfully submitted,

KENYON & KENYON

Dated: October 30, 2000

KENYON & KENYON  
1500 K Street, N.W., Suite 700  
Washington, DC 20005  
(202) 220-4200  
(202) 220-4201 (fax)

  
John C. Altmiller (Reg. No. 25,951)  
Robert L. Hails, Jr. (Reg. No. 39,702)

DC01 322791 v.1

DC01 748944 v.1



⑦

PATENT  
Docket No.: 77792/23IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT :  
SERIAL NO. : 08/750641  
FILING DATE : December 18, 1998  
FOR : SCHEDULE SETTING AND PROCESSING SYSTEM

Commissioner of Patents and Trademarks  
Washington D.C. 20231

## ASSOCIATE POWER OF ATTORNEY

Sir:

Please recognize John C. Altmiller, (Reg. No. 25,951) and other registered practitioners of Kenyon & Kenyon included in the Customer Number provided below, with full power to prosecute said application, to make alterations and amendments therein, and to transact all business in the Patent and Trademark Office connected therewith.

---

CUSTOMER NUMBER: 23838

---

Respectfully submitted,

Date November 6, 2000  
Edward W. Greason  
Reg. No. 18,918

KENYON & KENYON  
One Broadway  
New York, NY 10004  
(212) 425-7200 (telephone)

DC01 333824 v.1

DC01 748944 v1





**EXHIBIT 3 TO ALTMILLER DECLARATION****CATHY RYAN****KENYON & KENYON**1800 K STREET, N.W., SUITE 700  
WASHINGTON, D.C. 20006-1200  
PHONE (202) 730-0200

1/12/00

DIRECT DIAL LINE AND-4076  
FROM 1800 730-0200  
E. J. JAMES, Director/Client Relations

Conversation w/ Group receiptist  
File has been reported lost  
in USPTO (11/27th) The  
last known destination  
for this file was the  
file repository. There  
is no record of  
anyone ordering this  
file. I recommend contacting  
the Examiner to see if  
they need our file to  
rebuild the lost one.

**CATHY RYAN**  
**KENYON & KENYON**

1300 K STREET, N.W., SUITE 800  
WASHINGTON, D.C. 20005-1047  
PHONE (202) 222-4201

PROJECT QUALIFON 378-2240  
FAX (202) 222-4201  
E-MAIL: cryan@kenyon.com

1/12/01 10:45

Left message w/ O.  
Hernandez

Power to  
Inspect

Dis.  
info. sent to  
FBI & FBI  
of course  
D. 11/45  
C. 11/45  
C. 11/45  
C. 11/45

12/10/01  
10:45  
10:45  
10:45

**EXHIBIT 4 TO ALTMILLER DECLARATION***LAST 1/16/01***PATENT**  
**Docket No. 77792/23****IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Inventors : Koji SATO et al.  
Serial No. : 08/750,641  
Filed : December 16, 1996  
For : SCHEDULE SETTING AND PROCESSING SYSTEM  
Examiner : O. Hernandez

Assistant Commissioner of Patents  
Washington D.C. 20231

**POWER TO INSPECT AND MAKE COPIES**


SIR:

Denise English and Jay Johnson are hereby authorized to inspect and copy the file for the above-captioned matter.

Respectfully submitted,

KENYON &amp; KENYON

Date: 2/7/01, 2001

  
John C. Altmiller, Registration No. 25,951  
KENYON & KENYON  
1500 K Street, N.W., Suite 700  
Washington, D.C. 20005  
Telephone: (202) 220-4200  
Facsimile: (202) 220-4201

**EXHIBIT 5 TO ALTMILLER DECLARATION****PATENT**  
**Docket No.: 77792/23****IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

APPLICANT : Koji SATO, et al.  
SERIAL NO. : 08/750,641  
FILING DATE : December 16, 1996  
FOR : SCHEDULE SETTING AND PROCESSING SYSTEM  
GROUP ART UNIT : 2316  
EXAMINER : O. HERNANDEZ

Assistant Commissioner for Patents  
Washington, D.C. 20231

**FILE RECONSTRUCTION****SJR:**

We have been informed by the Office that the U.S. Patent and Trademark Office's file for the above-referenced case has been lost. Please find attached a copy of the relevant documents forming the file history for this application from the applicant's files for use in reconstructing the Office's file.

Please reconstruct the file. Thank you for your attention to this matter. Please contact the undersigned at 202-220-4232, for any questions.

Respectfully submitted,



Mark H. Neblett  
Reg. No. 42,028

DC01 381128 v 1

DC01 748944 v1

## EXHIBIT 6 TO ALTMILLER DECLARATION

IPSS000001  
Kenyon & Kenyon

## Patent Jacket Data Sheet

B. O'DOWD  
DANIEL G. SHANLEY

P23830 USW  
Client Ref  
Office DC

L. SCHEUGENPFLUG

The SCHEDULE SETTING AND PROCESSING SYSTEM

Prosecution Particulars				Parties	
Prosecution Status	Live - Pending			Applicant/Regd.	TOYOTA JIDOSHA KABUSHI
Priority Claimed	8-288290	01-Dec-1994	Japan	Inventor	KIZU, Masazumi
Parent	PCT/JP94/02489	01-Dec-1995	WO	Inventor	MORITA, Shohichi
Application	08/750841	01-Dec-1995	US (PCT)	Inventor	SATO, Koji
Filed on		16-Dec-1996		Inventor	YAMASHITA, Masamichi
Publication				Ref/Trans	8367 / 229
Allowed					
Grant Fees Paid					
Grant					
Expiry					
Agent	KENYON N.Y.				
Renewal Particulars					
Renewal Status	Pre-Grant				
Annually					
Next Due					
Next Cost					
Cost Risk/Life					
Comm Date	Communication / Action	Due Date	Last Date	Response Filed	
16-Dec-1996	30 MONTH NATIONAL PHASE APPLIC	16-Dec-1996	16-Dec-1996	16-Dec-1996	
16-Dec-1996	IDS Due	16-Dec-1996	16-Dec-1996	16-Dec-1996	
16-Dec-1996	Preliminary Amendment	16-Dec-1996	16-Dec-1996	16-Dec-1996	
16-Dec-1996	Recordal	16-Dec-1996	16-Dec-1996	16-Dec-1996	
14-Feb-1997	NOTICE OF ACCEPTANCE OF APPLIC				
14-Mar-1997	Filing Receipt				
16-Mar-1997	IDS - supp1 IDS	16-Mar-1997	16-Mar-1997	16-Mar-1997	
07-May-1997	Recordal	07-May-1997	07-May-1997	07-May-1997	
02-Jun-1997	IDS - supp1 IDS	02-Jun-1997	02-Jun-1997	02-Jun-1997	
27-Jun-1997	IDS - supp1 IDS	27-Jun-1997	27-Jun-1997	27-Jun-1997	
04-Sep-1998	IDS - supp1 IDS	04-Sep-1998	04-Sep-1998	04-Sep-1998	
17-Mar-1999	IDS - supp1 IDS	17-Mar-1999	17-Mar-1999	17-Mar-1999	
12-Oct-1999	Ext of Time Requested	12-Oct-1999	12-Oct-1999	12-Oct-1999	
09-Jun-1999	Respond to Official Action	09-Nov-1999	09-Nov-1999	12-Oct-1999	
23-Nov-1999	Final Response to Final Due	23-Jan-2000	23-Jan-2000	23-Feb-2000	
23-Nov-1999	Notice of Appeal Due	23-Feb-2000	23-May-2000	15-Mar-2000	
	CPA Appl'n Filed	15-Mar-2000	15-Mar-2000	15-Mar-2000	
	Suppl. Info. Discl. State.	15-Mar-2000	15-Mar-2000	15-Mar-2000	
08-Sep-2003	Status Inquiry	08-Sep-2003	08-Sep-2003	08-Sep-2003	
	File IDS per 11/13/03 agent let	05-Dec-2003	05-Dec-2003	18-Nov-2003	
09-Sep-2004	Supplemental IDS Filed	08-Sep-2004	08-Sep-2004	08-Sep-2004	
15-Sep-2004	Letter to PTO	15-Sep-2004	15-Sep-2004	15-Sep-2004	
08-Aug-2006	Petition Filed	06-Aug-2006	06-Aug-2006	06-Aug-2006	
08-Aug-2006	Request Continued Examination	06-Aug-2006	06-Aug-2006	06-Aug-2006	
	Advisory Action Received	29-Feb-2000	29-Feb-2000		
	PTO last file-drawing OA	15-Jul-2002	15-Jul-2002		
12-Sep-2008	Decision on Petition - Denial		12-Sep-2008		

Updated At 08/05/2025 10:00 Filed 18 Sep 2006

PG01, 000

Updated 06/10/08 YYY upon Filed 18 Sep 2008

PTO1 06/10/08 06/10/08

77792/25

Page 1 of 2

DC01 748944 v1

**EXHIBIT 7 TO ALTMILLER DECLARATION****PATENT**  
**DOCKET NO.: 77792/23****IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

**APPLICANT(S):** Koji SATO et al  
**SERIAL NO.:** 08/750,641  
**FILED:** December 16, 1996  
**FOR:** SCHEDULE SETTING AND PROCESSING SYSTEM  
**ART UNIT:** 2316 **EXAMINER:** O. Hernandez

**COMMISSIONER FOR PATENTS**  
P.O. Box 1450  
Alexandria, VA 22313-1450


**STATUS INQUIRY****SIR:**

Applicants for the above-cited U.S. application respectfully request that the Examiner inform Applicants of the status of the application. Applicants filed the application on December 16, 1996 and received an official Filing Receipt on March 14, 1997.

The U.S. Patent and Trademark Office notified Applicants that the subject file had been lost and, accordingly, Applicants filed a copy of the relevant documents forming the file history in a File Reconstruction on March 23, 2001.

The Commissioner is authorized to charge any fee relevant to this filing to Kenyon & Kenyon Deposit Account No. 11-0600. A duplicate of this account is attached.

Respectfully submitted,

Date: September 8, 2003  
John C. Altmiller  
(Reg. No. 25,951)

**KENYON & KENYON**  
1500 K Street, N.W., Suite 700  
Washington, DC 20005  
Tel: (202) 429-1776  
Fax: (202) 429-0796

The stamp of the Patent Office herein may be taken as acknowledging the receipt, on the date stamped, of:

INVENTOR(S): Keji SATO et al.  
SERIAL NO.: 08750,641  
FILED: December 16, 1996  
TITLE: SCHEDULE SETTING AND PROCESSING SYSTEM  
GROUP ART: 2316  
EXAMINER: O. Hernandez

PATENT FILER:

1. Status Inquiry

JCA/tnq

September 8, 2005

